

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
CASE NO. 7:21-cv-00106-M

WAYNE NUTT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ANDREW L. RITTER, in his official	)	
capacity as Executive Director of the	)	
North Carolina Board of Examiners for	)	
Engineers and Surveyors; and JOHN	)	<b>NOTICE OF FILING REGARDING</b>
M. LOGSDON, JONATHAN S. CARE,	)	<b>THE PENDING CROSS-MOTIONS</b>
DENNIS K. HOYLE, RICHARD M.	)	<b>FOR SUMMARY JUDGMENT</b>
BENTON, CARL M. ELLINGTON, JR,	)	
CEDRIC D. FAIRBANKS, BRENDA L.	)	
MOORE, CAROL SALLOUM, and	)	
ANDREW G. ZOUTWELLE, in their	)	
official capacities as members of the	)	
North Carolina Board of Examiners for	)	
Engineers and Surveyors,	)	
	)	
Defendants.	)	

Defendants hereby submit this NOTICE OF FILING regarding the pending cross-motions for summary judgment. [ECF Doc. 42 and ECF Doc. 46].

Plaintiff's motion for summary judgment seeks a declaratory judgment that N.C. Gen. Stat. § 89C-23's prohibition on unlicensed engineering testimony violates the First Amendment. [ECF Doc. 46]. The Memorandum in Support of Plaintiff's Motion for Summary Judgment frames the issue as follows: "Wayne claims that prohibiting him from testifying about engineering issues violates the First Amendment; he seeks prospective relief permitting him to express engineering opinions in the future." [ECF Doc. 47 at p. 24 of 38]. Plaintiff's lawsuit seeks a

declaration involving future testimony in the case identified as *Jackie W. Autry, et al. v. Bill Clark Homes, LLC, et al*, New Hanover County Superior Court, File Number 19 CVS 4520 (the “Underlying Lawsuit”). In Plaintiff’s Memorandum in Opposition to Defendants’ Motion for Summary Judgment, Plaintiff inserted the following footnote about the Underlying Lawsuit: “After this case was filed, the state court dismissed the *Autry* case for reasons unrelated to Wayne’s testimony. (*Id.* ¶ 71). That matter remains on appeal, and Wayne still wants to testify at trial when and if it is remanded. (*Id.*)” [ECF Doc. 52, footnote number 5 at p. 14 of 36].

On December 20, 2022, the North Carolina Court of Appeals issued a written opinion in the Underlying Lawsuit affirming the trial court’s orders dismissing the case. The case was unanimously decided without a dissent. A copy of the North Carolina Court of Appeals opinion in the Underlying Lawsuit is attached hereto as Exhibit A.

Respectfully submitted this the 22<sup>nd</sup> day of December, 2022.

FITZGERALD HANNA & SULLIVAN, PLLC

/s/ Douglas W. Hanna

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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the foregoing **NOTICE OF FILING REGARDING THE PENDING CROSS-MOTIONS FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

W. Cory Reiss, Reiss & Nutt, PLLC, wcreiss@reissnutt.com

Robert J. McNamara, Institute for Justice, rmcnamara@ij.org

Joseph Gay, Institute for Justice, jgay@ij.org

This the 22<sup>nd</sup> day of December, 2022.

/s/ Douglas W. Hanna  
Douglas W. Hanna, NCSB #18225